IN THE HIGH COURT OF JUDICATURE AT BOMBAY

IN INSOLVENCY

PETITION NO.156 OF 2004

Re: Prem Kapoor ..Debtor.

Ex parte:

Varsha D. Punjabi .. Petitioning Creditor.

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Ms. K.S. Lalwani for the Petitioning Creditor.
Mr. Jayant Gaikwad for the Debtor.

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CORAM: DR. D.Y. CHANDRACHUD, J.

19th August, 2006.

P.C. :

The Insolvency Petition is based on a decree passed by this Court on 15th July, 2002 in Summary Suit 1079 of 2000. The decree is in the sum of Rs.2,89,673.26 together with interest at the rate of 18% per annum on the principal sum of Rs.1.50 lacs from 23rd December, 2003. An Insolvency Notice was issued on 30th April, 2004 which was served on 20th May, 2004. The act of insolvency was complete on 25th June, 2004. In the meantime, it would appear that a Notice of Motion was taken out (Notice of Motion 125 of 2005 in Notice N/36 of 2004) for setting aside the

Insolvency Notice. On 18th April, 2006, the Learned Single Judge, noted the statement of the Judgment Debtor that a total payment of Rs.3.25 lacs would be made in seven equal monthly installments commencing from 1st May, 2006. A conditional order was passed by which in the event of default the Motion was to stand dismissed but, if the entire amount was paid in accordance with the installments, the Motion was to be made absolute. It is an admitted position that no amount has been paid in pursuance of the order dated 18th April, 2006. The act of insolvency has been complete. Even thereafter after the Petition was filed and though an opportunity was granted to the Debtors to pay the outstanding dues, the Debtors have failed to do so. In the circumstances, the Petition will have to be allowed and is accordingly allowed in terms of prayer clauses (a) and (c).